

REMARKS

Reconsideration and withdrawal of the rejection and the allowance of all claims now pending in the above-identified patent application (*i.e.*, Claims 9-15) are respectfully requested in view of the foregoing amendments and the following remarks.

At the outset, it should now be recognized that the present invention, as now claimed, provides a flat and low pourer-closure for composite packs or container openings closable with a thick foil, which has a minimum "built-up" height, affording the user a hygienic, simple, clean and reliable opening of the composite pack, and a complete removal of the contents thereof. The flat and low pourer-closure of the claimed invention includes a bottom part having a base plate fixable onto a composite pack or thick foil, and with the base plate having a drain opening and an upwardly jutting projection surrounding the base plate on an outer side. A hinged cover is swivelable toward the bottom part for swiveling upwardly and tightly swiveling downwardly onto the bottom part. The hinged cover has a downwardly projecting collar running around a bottom side of the hinged cover and corresponding with the upwardly jutting projection of the bottom part. There is, further, a break-off plate in the drain opening of the base plate with the break-off plate having an outer edge connected to an inner edge of the drain opening through material bridges as breaking points, so that a bottom side of the break-off plate runs flush with a bottom side of the base plate and both are fixable onto the composite pack or the thick foil. The break-off plate includes a recess, wherein at an edge position, a tongue is formed for allowing the break-off plate to be torn off by breaking the material bridges

from the drain opening of the base plate, including the thick foil fixed to the base plate for opening the composite pack, after upwardly swiveling the hinged cover.

In order to properly open an orifice on a composite pack, which is sealed with a thick foil covering the orifice, the foil must be torn away. For accomplishing this task:

(a) The closure should be as thin as possible, having a minimal height, as explained in Applicants' *Specification* at Pages 3 – 4. This is achieved by providing that the base plate, which is being torn off, is directly welded to the thick foil sealing the orifice.

(b) The closure should be easy, or convenient, to handle, and particularly easy to open. In order to be able to tear off the plate, a handle formed as a tongue is provided. This tongue, nevertheless, must be easy to grip, and this is only able to be accomplished when the tongue is swivelably attached to the plate, within a recess in the plate. More particularly, the tongue – after opening the cover of the closure – can first be swiveled upwardly and can then be gripped. This is achieved by creating a tongue which is completely within a recess in the plate to be torn off, but which is held in a “slanted-up” position, so that it can easily be caught, and gripped, once the cover is swiveled open.

(c) The closure cover should remain open, once it has been swiveled open. This is achieved by the present invention, which, in a preferred embodiment recited in dependent Claim 12, provides a tooth (26), which flips back-and-forth for holding the cover in either an open or closed position.

(d) The closure should be tightly re-closable, once opened. This benefit is accomplished via the preferred embodiment of the invention, as recited in dependent

Claim 11.

As will be explained in greater detail hereinafter, nowhere in the prior art is such a novel and efficient flat and low pourer-closure for composite packs or container openings closable with a thick foil, which has a minimum “built-up” height, affording the user a hygienic, simple, clean and reliable opening of the composite pack, and which includes a bottom part having a base plate fixable onto a composite pack or thick foil, with the base plate having a drain opening and an upwardly jutting projection surrounding the base plate on an outer side, either disclosed or suggested.

By the present amendment, Applicants have amended independent Claim 9 (and Claims 10-15 via dependency) to now recite that the bottom side of the break-off plate runs flush with the bottom side of the base plate --and that both are fixable onto said composite pack or said thick foil-- and, further, that a tongue is formed for allowing the break-off plate to be torn off by breaking the material bridges from the drain opening of the base plate --include said thick foil fixed to said base plate for opening said composite pack-- after the hinged cover is upwardly swiveled. Such features, as explained below, are neither disclosed nor suggested by the prior art.

Turning now, in detail, to an analysis of the Examiner’s prior art rejection, in the first Office Action the Examiner has rejected independent Claim 9 (and various dependent claims) as being obvious, pursuant to 35 U.S.C. §103(a), over Schellenberg *et al.*, U.S. Patent Application Publication No. 2004/0035883, taken in view of Buchner *et al.*, U.S. Patent No. 4,735,336. It is the Examiner’s contention that the primarily-applied

reference of Schellenberg *et al.* discloses a flat and low pourer-closure comprising a bottom part having a base plate (1), an upward projection element (7), a hinged cover (3a), a break-off plate (1a), first and second beads (15, 17) and a pour lip (24). The secondary reference of Buchner *et al.* has been applied by the Examiner for its contended disclosure of a base plate (20) formed with a drain opening and a thick foil. The Examiner has, therefore, concluded that it would have been obvious to have made the packaging container opening device of Schellenberg *et al.* with “the break off base plate formed with a drain opening and a thick foil,” as the Examiner has contended is disclosed by Buchner *et al.*, to arrive at that being claimed by the instant Applicants.

In reply to the Examiner’s obviousness rejection of independent Claim 9, which applies Schellenberg *et al.*, taken in view of Buchner *et al.*, the primarily-applied reference of Schellenberg *et al.* teaches an opening device for packaging containers, but fails to disclose the inclusion of a recess nor a tongue attached to, or formed at, the inner edge of the recess, as recited in Applicants’ Claim 9. Furthermore, the plate to be torn off in the apparatus taught by Schellenberg *et al.* is not fixed to a thick foil that spans the opening of an orifice in the composite packaging, as now set forth in Claim 9. Consequently, the closure disclosed by the primarily-applied citation of Schellenberg *et al.* cannot be used for composite packaging, which has a “prepared” orifice and is sealed with a thick foil.

The secondarily-applied reference of Buchner *et al.* provides a more simplified example of a closure for packaging containers, which is not reclosable after being torn

open. The packaging container disclosed by Buchner *et al.* has no recess which includes a tongue for tearing the break-off plate open, as now recited in independent Claim 9, which is preferably welded onto the thick sealing foil of the composite pack.

Considering the combined teachings and suggestions of Schellenberg *et al.* with Buchner *et al.*, a recess for a tongue for conveniently and properly tearing the break-off plate open is neither disclosed nor suggested. The present invention, as now claimed, provides that a tongue – after opening the cover of the closure – can first be swiveled upwardly and can then be gripped, which is achieved by creating a tongue which is completely within a recess in the break-off plate to be torn off, but which is held in a “slanted-up” position, so that it can easily be gripped, once the cover is swiveled open.

It is, therefore, respectfully submitted that Schellenberg *et al.*, taken in view of Buchner *et al.*, fails to teach or suggest the inclusion of a tongue within recess for tearing open the break-off plate of a composite pack and, consequently, it is contended that the Examiner’s 35 U.S.C. §103(a) obviousness rejection of the first Office Action should be appropriately withdrawn.

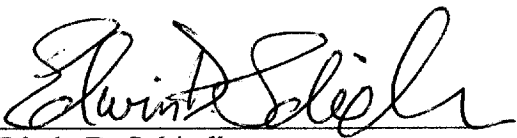
Concerning, finally, the remaining references cited by the Examiner, but not applied in any rejection of Applicants’ claims, such additional references have been carefully considered, but are not deemed to adversely affect the patentability of the present invention, as now claimed.

In view of the foregoing, it is respectfully contended that all claims now pending

in the above-identified patent application (*i.e.*, Claims 9-15) recite a novel and efficient flat and low pourer-closure for composite packs or container openings closable with a thick foil, which has a minimum "built-up" height, affording the user a hygienic, simple, clean and reliable opening of the composite pack, and which includes a tongue within a recess for tearing open the break-off plate of the composite pack or container, which is patentably distinguishable over the prior art. Accordingly, withdrawal of the outstanding rejection and the allowance of all claims now pending are respectfully requested and earnestly solicited.

Respectfully submitted,

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- Enc.: 1. Petition for Two-Month Extension of Time for Response; and,
2. EFT for \$460.00 (Two-Month Extension Fee)

The Commissioner for Patents is hereby authorized to charge the Deposit Account of Applicant's Attorney (*Account No. 19-0450*) for any fees or costs pertaining to the prosecution of the above-identified patent application, but which have not otherwise been provided for.